

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

**In the Matter of:**

**MIO TRANSPORTATION, LLC,**

**Respondent.**

**Docket No. FMCSA-2009-0058<sup>1</sup>  
(Midwestern Service Center)**

**ORDER APPOINTING ADMINISTRATIVE LAW JUDGE**

**1. Background**

On November 24, 2008, Claimant, the Field Administrator for the Midwestern Service Center, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim to Respondent, MIO Transportation, LLC,<sup>2</sup> "Jointly & Liable with Larry D. Fellows dba Fellows Trucking Inc." (Fellows Trucking), proposing a civil penalty of \$15,400 for alleged violations of the Safety Fitness Procedures and FMCSA's Rules of Practice. Specifically, the Notice of Claim, which was based on a special investigation at its offices on October 28, 2008, charged Respondent with: (a) one violation of 49 CFR 385.13(a)(1), with a proposed civil penalty of \$7,700, for operating a commercial motor vehicle after the effective date of an unsatisfactory safety rating; and (b) one violation of 49 CFR 386.83(a)(1), with a proposed civil penalty of \$7,700, for operating a commercial motor vehicle in interstate commerce during a period when it was prohibited from operating for failure to pay a civil penalty. The Statement of Charges section of the

---

<sup>1</sup> The prior case number of this matter was MI-2009-0104-US0424.

<sup>2</sup> Note that Claimant uses lower case letters for the "i" and the "o," whereas Respondent uses upper case letters. Upper case letters are used in this Order because we presume that Respondent knows its own name.

Notice of Claim alleged that Respondent is a continuing carrier operation of Fellows Trucking. Regarding the first charge, it alleged that Respondent used a driver to operate a commercial motor vehicle in interstate commerce after an unsatisfactory out-of-service (OOS) order was issued to Fellows Trucking on May 30, 2008, and went into effect on June 4, 2008. Regarding the second charge, it alleged that Respondent, formerly known as Fellows Trucking, used a driver to operate a commercial motor vehicle after failing to pay a civil penalty within 90 days after the date specified by FMCSA's Final Agency Order, which was effective on September 2, 2008, and an OOS order that was served on the carrier on August 20, 2008.<sup>3</sup>

On December 22, 2008, Respondent replied to the Notice of Claim, denying the violations and requesting a formal hearing. It contended that it was not the mere continuation of, or alter ego to, Fellows Trucking. It argued that Fellows Trucking had ceased operations for economic reasons and is proceeding with a dissolution process. "MIO Transportation, LLC is a separate and distinct legal entity with a different set of owners and officers, separate bank accounts, separate accounting books, a separate tax identification number, and a separate USDOT number." It also "has a different business model ... and serves a broader set of customers than Fellows Trucking...." Respondent further argued that it was formed in February of 2008, before the enforcement action against Fellows Trucking in the Spring of 2008. Although admitting that it hired several drivers formerly employed by Fellows Trucking, Respondent maintained that some Fellows Trucking drivers were not hired. Finally, it averred that on September 12, 2008, following a safety audit, "[Respondent] was informed that 'the Federal Motor Carrier

---

<sup>3</sup> See Plaintiff's Exhibit A to Field Administrator's Objection to Respondent's Request for Formal Hearing (Claimant's Objection to Hearing).

Administration ... has determined that you may continue to operate within the United States.”

On February 25, 2009, Claimant submitted his “Objection to Respondent’s Request for Formal Hearing” (Claimant’s Objection to Hearing). In it, he stated, “Though the carrier seems to be quite familiar with the operations of Larry Fellows LLC,<sup>4</sup> MIO TRANSPORTATION does not respond to the allegations that Larry Fellows LLC operated in violation of the aforementioned [OOS] orders.” Claimant also argued that his counsel had “reviewed all the documents collected by the Michigan Division in support of the alleged violations and is convinced the evidence supports the allegations in the ... Notice of Claim.” (Emphasis supplied.) He concluded “that a *prima facie* case for the alleged violations is fully demonstrated by the documentary evidence collected by the Michigan Division.”

## 2. Discussion

Under the Rules of Practice in effect since November 14, 2005<sup>5</sup> (revised Rules of Practice), Claimant has 60 days from the date of service of the Reply in which to serve a consent or objection with a basis to a request for a hearing. “Failure to serve an objection within the time allotted may result in referral of the matter to hearing.”<sup>6</sup> Although the revised Rules of Practice require that the Field Administrator serve a Motion for Final Agency Order following his filing of an objection with basis, no time limit for that

---

<sup>4</sup> According to the Notice of Claim, the name of the carrier is not “Larry Fellows LLC.” It is “Larry D. Fellows dba Fellows Trucking Inc.” There is an “LLC,” but only in Respondent’s name - MIO Transportation, LLC.

<sup>5</sup> FMCSA revised its Rules of Practice, effective November 14, 2005. The revised Rules of Practice apply to all matters, including this one, in which a Notice of Claim is served on or after the effective date. 70 Fed. Reg. 28467, 28468 (May 18, 2005).

<sup>6</sup> See 49 CFR 386.16(b)(2).

pleading is provided.<sup>7</sup>

Prior Agency decisions have found that the objection with basis must provide the decisionmaker with a sufficient explanation of Claimant's issues in order to render the need for the imposition of a strict time period to file the motion for final agency order unwarranted.<sup>8</sup> Claimant did not do this. While Respondent lucidly set forth the issues in its Reply, Claimant merely concluded that he is convinced that the evidence supports the allegations in the Notice of Claim and that a *prima facie* case is fully demonstrated, without explaining, even in summary fashion, why. Claimant's stated basis is nothing more than a conclusion that a hearing is not warranted and, as such, equates to a failure to submit a timely objection with basis.<sup>9</sup> As a result, in accordance with 49 CFR 386.16(b)(2), the matter may be, and is, referred to the U.S. Department of Transportation's Office of Hearings.<sup>10</sup>

### **3. Appointment of Administrative Law Judge**

In accordance with 49 CFR 386.54, an administrative law judge is hereby appointed, to be designated by the Chief Administrative Law Judge of the Department of Transportation, to preside over this matter and render a decision on all issues, including the civil penalty, if any, to be imposed. The proceeding shall be governed by subparts D

---

<sup>7</sup> See 49 CFR 386.16(b)(3).


<sup>8</sup> See *In the Matter of Morning First Delivery, Inc.* Docket No. FMCSA-2008-0090, Order Appointing Administrative Law Judge, June 9, 2008, at 4; *In the Matter of U.S. Intermodal Corp.*, Docket No. FMCSA-2006-25248, Order Appointing Administrative Law Judge, April 4, 2008, at 3-4; *In the Matter of Sabek Transportation, Inc.*, Docket No. FMCSA-2007-29338, Order Appointing Administrative Law Judge, March 12, 2008, at 5.

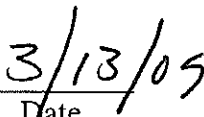
<sup>9</sup> *Id.*

<sup>10</sup> Moreover, the issues in this matter are clearly in dispute, warranting a hearing under 49 CFR 386.16(b)(1).

and E of 49 CFR Part 386 of the Rules of Practice and all orders issued by the  
administrative law judge.

*It Is So Ordered.*

  
\_\_\_\_\_  
Rose A. McMurray  
Assistant Administrator  
Federal Motor Carrier Safety Administration

  
\_\_\_\_\_  
Date

**CERTIFICATE OF SERVICE**

This is to certify that on this 17 day of March, 2008, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Phillip A. Erickson, Esq.  
Attorney for Respondent  
Plunkett Cooney  
Attorneys & Counselors at Law  
325 E. Grand River Avenue, Suite 250  
East Lansing, MI 48823  
(517) 324-5608 (phone)  
(517) 333-6694 (facsimile)

One Copy  
U.S. Mail

Peter W. Snyder, Esq.  
Trial Attorney  
Office of Chief Counsel (MC-CCE)  
Federal Motor Carrier Safety Administration  
19900 Governors Drive, Suite 210  
Olympia Fields, IL 60461  
(708) 283-3515 (phone)  
(708) 283-3579 (facsimile)

One Copy  
U.S. Mail

Darin G. Jones, Field Administrator  
Midwestern Service Center  
Federal Motor Carrier Safety Administration  
19900 Governors Drive, Suite 210  
Olympia Fields, IL 60461

One Copy  
U.S. Mail

Patrick B. Muinch  
Michigan Division Administrator  
Federal Motor Carrier Safety Administration  
315 West Allegan, Room 219  
Lansing, Mi 48933

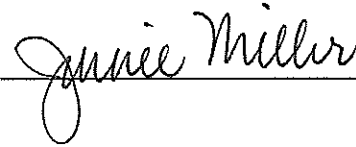
One Copy  
U.S. Mail

The Honorable Ronnie A. Yoder  
Chief Administrative Law Judge  
Office of Hearings, M-20  
U.S. Department of Transportation  
1200 New Jersey Avenue, S.E.  
East Building Ground Floor  
Room E12-320  
Washington, D.C. 20590

One Copy  
Personal Delivery

U.S. Department of Transportation  
Docket Operations, M-30  
West Building Ground Floor  
Room W12-140  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Original  
Personal Delivery

A handwritten signature in cursive script, reading "Jannie Miller", is written over a horizontal line.